

CHAPTER 5

NEW DEVELOPMENTS IN THE ELECTRIC INDUSTRY AND IMPLICATIONS FOR SELF-DEALING

Background

Most observers agree that competitive pressures will become a dominant force in the future structure and performance of the electric power industry. The passage of the Energy Policy Act of 1992 (EPAct) along with new market forces is expected to transform the electric power industry.¹ A competitive industry has begun to emerge in the wholesale market. Although a few barriers still remain to the full development of a competitive wholesale market, ultimately such a market should materialize after a period of transition.² Further developments are inevitable as increased competition in the generation sector, helped by nondiscriminatory transmission access, will result in markets becoming the major determinant of pricing and the delivery of electricity.

As of now, the degree to which competition will penetrate the retail sector is an open question. It seems doubtful, however, that as competition spreads in the electric power industry it will stop at the wholesale level. Retail customers will clamor for the right to choose power suppliers, who will likely increase in number. Suppliers themselves, including independent and utility-affiliated generators, will want the opportunity to sell their electricity directly to retail customers. In any event, retail competition will likely emerge in one form or another as the electric power industry

¹ Kenneth W. Costello et al., *A Synopsis of the Energy Policy Act of 1992: New Tasks for State Public Utility Commissions* (Columbus, OH: The National Regulatory Research Institute, 1993).

² For an analysis of barriers to the development of a competitive wholesale market and the role of regulators in removing such barriers, see Steven M. Lewis and Janet G. Besser, "The Competitive Generation Market Has Been Assumed, Not Proven," *The Electricity Journal* 8, no. 3 (April 1995): 70-73. See also National Independent Energy Producers, *Is Competition Here? An Evaluation of Defects in the Market for Generation* (Washington, D.C.: National Independent Energy Producers, April 26, 1995).

evolves in the years ahead.

Effect of New Developments on Self-Dealing

One development accompanying the increased competition in the wholesale electricity market has been the formation of energy-related subsidiaries within a parent utility holding company. In many instances, these subsidiaries construct and operate power plant projects outside of the utility's service area. Overall, over the last five years there has been a significant growth in independent power ventures by U.S. utilities in both this country and foreign countries.³

The increase in the number of utilities participating in independent power ventures, *per se*, potentially escalates the problem of self-dealing. The parent holding company, for example, may find it profitable for nonutility power producers to sell power to affiliated utilities. This would especially be true if the following conditions hold: (1) retail customers are "forced" to pay the affiliated price because they do not have access to alternate suppliers, (2) the utility company receives little or no economic gains (e.g., profits) from purchasing power from nonaffiliates, and (3) regulators find it difficult to detect abuse.⁴

On the other side of the coin, new developments in the electric power industry should mitigate self-dealing abuse. Possible developments include wholesale spot markets, Poolcos, retail competition, and vertical disintegration.

³ Edison Electric Institute, *Nonutility Business Activities of Investor-Owned Electric Utilities* (Washington, D.C.: Edison Electric Institute, 1994), 7.

⁴ These conditions may exist under cost-of-service regulation and current retail market conditions.

The Wholesale Spot Market

With open access to transmission lines and growing competition, a spot market will likely emerge for electricity as it has for natural gas. Such a market will develop for a commodity, such as electricity, so long as sellers and buyers have choices of different market participants. Specifically, with opportunities to sell to more buyers, wholesale producers will no longer be constrained to signing long-term sales contracts. Marketers and brokers will likely play a major role in creating and maintaining market centers for spot transactions on electricity. A spot market can exist under either the bilateral contracts, Poolco, or pooling model. Any of these institutional arrangements, under the right conditions, could support a spot market for electricity.

The spot market provides a good reference price for assessing power purchases by a utility. Spot prices correspond closely to actual and expected near-term market conditions. In short, they represent the market value of electricity. Consequently, the spot market can be an effective mechanism for mitigating self-dealing abuses. For example, spot prices can serve as a benchmark for comparing the market value of electricity and the price paid by a utility for power from individual sources.

The Poolco

One particular form of the spot market may be the Poolco mechanism. As proposed by its proponents,⁵ a Poolco would be a utility-independent, privately-owned entity acting as a go-between for a region's power sellers and users. Its primary function would be to dispatch generation and transmission in a manner that produces

⁵ See William W. Hogan, "Efficient Direct Access: Comments on the California Blue Book Proposals," *The Electricity Journal* 7, no. 7 (September 1994): 30-41; and Vikram Budhraj and Fiona Woolf, "POOLCO: An Independent Power Pool Company for an Efficient Power Market," *The Electricity Journal* 7, no. 7 (September 1994): 42-47. Also, see William W. Hogan "Reshaping the Electricity Industry," presented to the Federal Energy Bar, Washington, D.C., November 17, 1994.

the lowest possible operating costs.⁶ Some Poolco plans would also allow direct access to all market participants, including retail customers.⁷ Under a Poolco arrangement, the spot price for power determined by economic dispatching could be supplemented by a competitive power procurement mechanism for long-term power. In other words, power generators would bid into the short-term power pool for economic dispatch and, in addition, could engage in longer-term bilateral contracts to provide price hedging for both themselves and buyers.⁸

As an independent entity divorced from both power generators and buyers, and thus removing any conflict of interest, Poolcos would mitigate the problem of power subsidiaries participating in the franchised area of a regulated affiliate.⁹ In other words, the separation of asset ownership from dispatch control would avoid any operational problems associated with self-dealing.

Abusive self-dealing may also be mitigated by the fact that a Poolco would make decisions based on the overall needs of a pool at any given point in time. For example, the distribution utility could pass through only the pool prices to its franchised customers. This would be true even if the distribution utility owns generation assets.¹⁰ In the case of the distribution utility that has long-term contracts with an affiliate, terms and conditions would have to be transacted, just as they are today in several states, through a power procurement mechanism with regulatory oversight.

⁶ In other words, the Poolco would consolidate dispatch and transmission pricing.

⁷ One version of direct access calls for retail customers to remain with the local utility, which would purchase power from the wholesale market and resell it at a time-of-use rate based on the spot price.

⁸ Proponents argue that a Poolco arrangement would be required in developing a bilateral-contract market. Under a United Kingdom-style pool or a Poolco, the pool operator would separate the dispatch function from the obligation of bilateral contracts.

⁹ This benefit does not necessarily imply the authors' endorsement of the Poolco concept. As a wholesale power mechanism, Poolco may or may not be superior to bilateral contracts or other market institutions.

¹⁰ Poolco proponents argue that vertical disintegration would not be necessary to prevent abusive self-dealing.

The particular form of the spot market mediated by the Poolco mechanism would protect against most self-dealing problems.¹¹ Such a market would produce prices that are transparent, arm's length, and available to all generators and power purchasers in a region. Consequently, the Poolco could provide a reference point for assessing the reasonableness of a distributor's purchases, including those subject to long-term contracts.¹² In a Poolco arrangement, unregulated generation and marketing subsidiaries of a utility would compete against other entities.¹³ Neither the utility nor any entity would, therefore, have control of the short-term decisions of the spot market or the long-term decisions of a contract market.

Retail Competition

Retail competition, another likely development in the electric power industry, would also mitigate self-dealing problems. For example, direct retail customer access under a Poolco arrangement or retail wheeling under an alternative arrangement would force the utility company to compete with other power suppliers. Open-transmission tariffs would allow customer access to the wholesale market and customer choice in long-term power transactions. Under a new industry structure, generators may sell to market intermediaries, who in turn would sell to end-use customers.¹⁴ Market intermediaries would be assumed to have access to different generators. This access would protect against inflated prices by allowing end-use customers to "play the

¹¹ See, for example, William W. Hogan and Larry E. Ruff, *Reshaping the Electricity Industry: Competitive Market Structure and Regulatory Policy*, prepared for Wisconsin Electric Power Company, November 1, 1994.

¹² The spot price accounts for the market's best forecast of future supply and demand conditions. In a spot market, the risks of planning and operation mostly fall on generators and their investors rather than power purchasers.

¹³ Under one Poolco version, an entity called "Buyco" would purchase long-term power supply and transmission on behalf of retail customers.

¹⁴ *Ibid.*

market."

PUCs can both facilitate the development of a competitive retail market and lower the cost of power to retail customers by allowing and encouraging retail competition.¹⁵ A competitive retail market would also help PUCs design market-based rates for a utility's captive and monopoly customers by providing usable retail price indices, in addition to wholesale price indices.¹⁶

In conjunction with retail competition, rate unbundling would emerge. Separate services or products would be provided at market-based or regulated prices.¹⁷ Rate unbundling should make it harder for utilities to conceal any inflated purchased-power costs.¹⁸ The problem of self-dealing, however, may remain for those end-use customers who, for whatever reasons, continue to purchase bundled service from the local utility.

Vertical Disintegration

Vertical disintegration is another development that would minimize the self-dealing problem. In a vertical disintegration scenario, independent (arm's length) entities provide generation, transmission, and distribution services. Without vertical disintegration, some analysts doubt whether a fair and nondiscriminatory marketplace

¹⁵ Encouragement of retail competition as a regulatory option to mitigate self-dealing abuse is discussed in Chapter 6 of this report.

¹⁶ Market-based pricing schemes, such as price caps, to mitigate self-dealing abuse are discussed in Chapter 6 of this report.

¹⁷ Those services characterized as natural monopolies, such as transmission and distribution, would still be regulated. Other services with competitive features, for example electric power generation, would tend to be priced on the basis of marginal cost appended by a reservation fee to recover fixed costs.

¹⁸ The reason is simply that the utility company could not sell power at a price above the market level.

would exist in which abusive self-dealing would be absent.¹⁹ Their main argument is that vertical disintegration would be required to prevent owners of the transmission network from being controlled by an individual generator or distributor. Control implies that the transmission owner, who also has ownership or interest in the generation or distribution sectors, would have the incentive or opportunity to discriminate among generators or distributors. Vertical disintegration would eliminate such incentives or opportunities by removing the underlying conflicts of interest.

One can argue that with broad-based retail competition in place, vertical disintegration may not be necessary. In its absence, however, a strong case can be made that divestiture of generation assets in particular may be needed to protect retail customers against the utility company favoring its own generation assets or those of its affiliates.

Conclusion

Historically, state public utility regulators have faced the tough challenge of preventing abuses associated with self-dealing transactions. In an environment where a utility has broad monopoly power, the exposure of self-dealing abuse requires a significant amount of information. It is doubtful whether regulators ever had adequate staff resources or appropriate information to effectively detect other than the most grievous self-dealing abuses.

In the evolving competitive electric power industry, emerging market mechanisms may provide both increased opportunities for, and mitigative restraints, on self-dealing abuse. In particular, the emergence of wholesale spot markets and retail competition may significantly restrain self-dealing abuse, allowing regulators to focus their efforts on the noncompetitive segments of the market. Overall, the new market developments are likely to make the regulator's job easier in mitigating self-dealing

¹⁹ See Richard J. Pierce, Jr., "The Advantages of De-Integrating the Electricity Industry," *The Electricity Journal* 7, no. 9 (November 1994): 16-21.

abuse. These developments should present opportunities for regulators to rely more on market forces and principles, and performance-based incentives, and less on regulatory scrutiny and oversight to address the problem of self-dealing abuse.

CHAPTER 6

REGULATORY OPTIONS TO ADDRESS SELF-DEALING

As discussed elsewhere, regulators can use their authority over utility diversification and utility-affiliate transactions, in combination with standard oversight procedures (such as rate hearings, prudence reviews, FAC hearings, and management audits), to address the problem of self-dealing. The emerging competition in electricity markets and the recent trend toward adopting performance-based regulation offer regulators new tools to address self-dealing. Some of the possible regulatory options to address self-dealing abuse are listed in Tables 6-1, 6-2, and 6-3 and are examined in the following sections. Table 6-4 compares regulatory options.

Exercise Regulatory Authority Over Utility Diversification and Utility-Affiliate Transactions

Some commissions have authority over utility diversification and authority to attach conditions to approving diversification. If the new affiliated entities thus formed propose to sell capacity or energy in the service area under the PUC's jurisdiction, the PUC can invoke its authority to gain access to books and records of an utility subsidiary or affiliate and take appropriate action. The commission may use its findings to prevent self-dealing abuse in one or more phases of the subsequent phase of the power acquisition process, including contract review and approval, rate hearings, FAC hearings and *ex post* prudence reviews. Even if the commission does not have authority to disapprove contracts, the filing requirements associated with the commission's authority over diversification may allow it sufficient access to needed information to take remedial action against self-dealing abuse in subsequent regulatory proceedings.

TABLE 6-1 REGULATORY OPTIONS TO MITIGATE SELF-DEALING ABUSE
<ul style="list-style-type: none">● Exercise regulatory authority over utility diversification and utility-affiliate transactions● Introduce and/or reform competitive bidding procedures● Establish cap on the price of purchased power● Sever retail prices from cost of service● Base cost recovery and revenues on performance indices● Stimulate retail competition

<p>TABLE 6-2</p> <p>USING REGULATORY AUTHORITY OVER UTILITY DIVERSIFICATION AND AFFILIATE TRANSACTIONS TO MITIGATE SELF-DEALING ABUSE</p>
<ul style="list-style-type: none">• Require structural separation• Require divestiture• Regulate utility-affiliate relationships and transactions• Prohibit affiliate transactions• Selectively scrutinize affiliate transactions

TABLE 6-3
USING COMPETITIVE BIDDING
TO MITIGATE SELF-DEALING ABUSE

- Use a binding avoided cost
- Make the resource planning process transparent
- Review/preapprove Request for Proposals
- Allow third-party examination of bid evaluations
- Approve only fixed-price contracts
- Favor cost-sharing contracts with low sharing fractions
- Discourage/prohibit contracts with take-or-pay clauses
- Discourage/prohibit contracts with cost-plus escalation clauses

TABLE 6-4
COMPARING REGULATORY OPTIONS

Option	Traditional	Performance-Based	Market-Oriented	Advantages	Disadvantages
Structural separation	X			Reduces self-dealing opportunities involving affiliates	Makes self-dealing harder to detect
Divestiture	X			Essentially eliminates self-dealing opportunities involving affiliates	Economies of scope, coordination, and learning may be lost
Regulate utility-affiliate relationships/ transactions	X			Helps detect obvious cases of cross-subsidization and preferential treatment	May be costly and administratively burdensome
Selectively scrutinize affiliate transactions	X			Helps detect obvious cases of cross-subsidization and preferential treatment	May be costly and administratively burdensome
Prohibit affiliate transactions	X			Eliminates self-dealing opportunities involving affiliates	Economies of scope, coordination, and learning may be lost
Use a binding avoided cost	X			Induces utility to reveal its true cost	May jeopardize utility's financial position
Make resource planning transparent	X			Helps interveners detect self-dealing bias	Adds to cost and administrative burden

Option	Traditional	Performance-Based	Market-Oriented	Advantages	Disadvantages
Discourage/prohibit contracts with cost-escalation clauses		X		Provides cost-minimization incentives during post-contracting operations	May raise the cost of the contract
Establish cap on price of purchased power		X	X	Removes incentives for above-market payments to an affiliate	Establishing cap parameters may be contentious
Sever retail prices from cost of service		X		Removes incentives for cross-subsidization of an affiliate	Establishing indices for setting retail prices may be contentious
Base cost recovery/revenues on performance indices		X	X	Provides strong cost-efficiency incentives	Targeted incentives cause distortions
Allow/stimulate retail competition			X	Removes incentives for cross-subsidization of an affiliate	Places additional pressure for price increases to core customers; may cause undue price discrimination

Require Structural Separation

A PUC with authority over utility diversification may have the authority to order structural separation of the utility's and an affiliate's operations, assets and management. Such separation would remove all sources of common and joint costs, and therefore prevent cross-subsidization through misallocation of such costs.¹ However, structural separation may still retain some ownership interest of the utility in the subsidiary and therefore retain some incentive for the utility for preferential treatment of the structurally separated subsidiary. Also, although structural separation may somewhat mitigate self-dealing abuse, the detection of self-dealing abuse may become more difficult. This is so that because the commission would no longer have access to the books and records of the affiliate.

Require Divestiture

To achieve a complete break of the potential conflict of interest between the utility and a subsidiary, the commission may require divestiture of the subsidiary. A divestiture constitutes, besides separation of assets, management and operations, a separation of ownership. A divestiture essentially removes all incentives for self-dealing abuse and puts the subsidiary on the same footing as other power suppliers.² However, possible economies of scope, coordination, and learning and related efficiency benefits may be lost to ratepayers.

¹ A discussion of structural separation for regulated firms is contained in Edwin A. Rosenberg et al., *Regional Telephone Holding Companies: Structures, Affiliate Transactions, and Regulatory Options* (Columbus, OH: The National Regulatory Research Institute, 1993).

² There still may be some residual conflict of interest if the utility and the divested company continue to have common members on their board of directors.

Regulate Utility-Affiliate Relationships and Transactions

A PUC may have authority over specific aspects of utility-affiliate relationships. Allocation of assets, capital, and common and joint costs may be subject to PUC regulation. Also there may be filing, review and authorization requirements for all transactions, including power purchase contracts. A PUC may be able to detect obvious cases of cross-subsidization or preferential treatment of an affiliate by making use of such direct oversight authority over utility-affiliate relationships and transactions. However, intensive use of such oversight may be costly and administratively burdensome.

Selectively Scrutinize Affiliate Transactions

A state PUC can selectively escalate the level of scrutiny in traditional oversight mechanisms such as IRP hearings, CPCN, FAC hearings and prudence reviews when utility-owned generation power purchases from an affiliate is involved. The utility may be required to make more detailed filings of all affiliate transactions and also require the utility to justify why alternative options were not chosen. This general approach is currently used by most commissions in addressing the self-dealing problem. This option has the same limitations as the previous option.

Prohibit Affiliate Transactions

Utility-affiliated transactions could be prohibited. While preventing abusive self-dealing, such an option seems overly Draconian. Occasionally, or perhaps frequently, it may be in the interest of retail customers for the utility to purchase electricity from an

affiliate.³ This would be true if there were economies of scope, coordination, and learning, in affiliate transactions or if an affiliate were in fact the lowest-cost supplier. Complete prohibition of affiliate transactions would preclude the potential savings resulting from such efficiencies to retail customers.

**Introduce Competitive Bidding or Reform Existing
Competitive Bidding Procedures**

As discussed previously, state regulators could establish competitive-bidding procedures or some other market-oriented process that would help to assure that the local utility buys the "best" power.⁴ For example, in New York the Commission requires sealed bids that are opened by an independent party.⁵ New York also penalizes a utility for detected abusive self-dealing and requires a utility to explain rejection of an unaffiliated bid.⁶ In general, state PUCs could set up a competitive-bidding mechanism that requires an outside referee or independent evaluator to assess the bids. The bids could be evaluated on the basis of what would be in the

³ On the other hand, it can be argued that the risk to retail customers from self-dealing is sufficiently large to prohibit all such transactions. It may be the case that the potential benefits from self-dealing would be small. This may be especially true in a competitive wholesale power market where the utility company could choose from a large number of suppliers.

⁴ The "best" power may not necessarily be the lowest-cost power if, from the perspective of the utility company and its customers, nonprice provisions (e.g., firmness of power) of a contract favor other sources of power.

⁵ New York Public Service Commission, *Opinion and Order Concerning Bidding, Avoided-Cost Pricing, and Wheeling Issues*, Case No. 29409, Proceeding on Motion of the Commission to Examine the Plans for Meeting Future Electricity Needs in New York State, June 3, 1988.

⁶ The penalty would be imposed by lowering the utility's allowed rate of return on equity or by adopting some other financial sanction. Incidentally, the Commission's enforcement of financial penalties could also apply in situations where competitive bidding does not involve affiliated transactions.

retail customers' best interest.⁷ Competitive bidding is increasingly being adopted by state commissions.⁸

To ensure that competitive bidding serves the intended purpose of obtaining the "best" power, certain options merit consideration. They include using a binding avoided cost, allowing stakeholders access to the methods and data used in determining resource needs, requiring fixed-cost contracts or contracts with low (utility) cost-sharing ratios, and discouraging take-or-pay provisions or cost-plus escalation clauses.

Use A Binding Avoided Cost

The commission may require that a binding avoided cost be posted. If the bidding process does not find a bidder with a cost lower than the avoided cost of the utility, the utility would be bound by the posted avoided cost. Making the avoided cost binding forces the utility to reveal its true cost. If the utility posts an avoided cost below the true cost, it risks being locked into building capacity or generating power at a loss. On the other hand, if the utility bids above its true cost, it risks the possibility of another supplier winning the bid whose bid price may be actually higher than the utility's true cost. A posted avoided cost would also induce the affiliate to bid its true cost. Given the commonalities of management, expertise, financing arrangements and access to resources, an affiliate's true cost is

⁷ For a full discussion of competitive power procurement mechanisms, see Kenneth Rose, Robert E. Burns, and Mark Eifert, *Implementing a Competitive Bidding Program for Electric Power Supply* (Columbus, OH: The National Regulatory Research Institute, 1991). Self-dealing opportunities in the competitive power procurement process are discussed in Chapter 2 of this report.

⁸ According to an NRRRI survey (Appendix of this report), twenty-eight states currently have competitive power procurement mechanisms.

likely to be close to that of the host utility. Once the host utility's avoided cost is posted, the affiliate has no reason to bid significantly above or below the posted cost. That the affiliate or, for that matter, any other party would not bid above the posted avoided cost needs no explanation. The affiliate also would not bid significantly below the posted avoided cost because such a bid would also most likely be below the affiliate's true cost. The only reason the affiliate may underbid (bid below its true cost) is if it expects to recover the shortfall in post-bidding contracting. An affiliate's lower bid, however, is likely to, and should, invite additional scrutiny at both the evaluation phase and the contracting phase of the bidding process, and deter such strategic underbidding.

Also, there are two options on the disclosure of the avoided cost. The utility could make a public disclosure of the avoided cost so that potential bidders are made aware of the ceiling that would be used to evaluate their bids. The only problem with this option is that there may be a tendency to bid just slightly under the avoided cost regardless of the true cost of any bidder. This would be particularly true in first-price bidding. Another option is for the utility to post the avoided cost only to the PUC. One can speculate that this may induce potential bidders to bid closer to their true costs. Even though a bidder may still bid strategically—namely, bid higher than its true cost in the hope of earning an economic rent—the fact that the bidder does not have knowledge of the ceiling price removes one source of informational support for such behavior.

One cannot definitively assert which form of disclosure of the avoided cost would better mitigate the problem of strategic bidding or which is more likely to restrain self-dealing abuse. However, under either form of disclosure, a posted and binding avoided cost is more likely to restrain self-dealing abuse.

One disadvantage of restricting the utility to a binding avoided cost is that it may jeopardize the utility's financial position if future costs significantly fluctuate from forecasted costs.

Make the Resource Planning Process More Transparent

Another option PUCs may wish to consider is to require the utility to expand access to all stakeholders to the resource planning process from the very early stages. For example, the load forecast and resource needs determination, and associated data and analysis, could be made available to all interested parties, including potential power suppliers, at some minimum level of detail even before the issuance of the RFP. This would provide potential bidders additional data, and time, to analyze the viability of any projects they contemplate. This would also enable early detection of flaws, or any self-dealing bias, in the data and analysis. However, one needs to guard against expanding opportunities for intervention, which adds to the administrative burden and costs of the PUC and the utility. Making information available early to the interested parties may be sufficient. The threat of intervention in later hearings may induce the utility to avoid major flaws or biases in the load forecast and resource-needs determination phase of the resource planning process.

Review or Preapprove the Request for Proposals

The PUC may consider reviewing the request for proposals (RFP) to examine any apparent bias that favors utility-owned generation or power procurement from an affiliate. The PUC also may require preapproval of the RFP before it is released to prospective bidders. Such requirements may help detect any obvious self-dealing bias. However, given the complexity of the RFP, the fact that the utility is in the best position to know its own needs, and the lack of knowledge of the competing power suppliers and costs, it may still be difficult to detect any self-dealing bias. Allowing such intervention may be viewed as an unnecessary bureaucratic intrusion into the utility's resource acquisition process, and may add to the cost and administrative burden of the PUC and the utility.

Allow Third-Party Examination of Bid Evaluation

The PUC may require either that the bid evaluation be performed by a third party or that the utility's own evaluation be reexamined by a third party. The third party may be designated PUC staff or a consultant designated by the commission. The option to be chosen depends on the relative costs and administrative burdens. Other considerations may also apply. For example, a PUC taking on the responsibility of evaluating bids may be viewed as unduly intrusive and micromanaging. Such activities run counter to the emerging era of increasing competition in the electricity industry. One may also argue that current PUC regulation allows opportunities for contending parties to contest the utility's bid evaluations and intervene if necessary. However, the adversarial nature of such interventions inspires advocacy rather than objective examination of the evaluations. A dispassionate examination by a third party, presumably with more expertise than the contending parties, is likely to better achieve the goal of an optimal evaluation of bids and be more helpful in protecting ratepayer interests.

Approve Only Fixed Price Contracts

To the extent that a PUC has the authority to review and approve contracts, a PUC may choose to approve only fixed price contracts. The RFP issued prior to bidding can also stipulate only fixed price contracts. A fixed price contract provides a strong incentive for cost minimization. Also, a fixed price contract shifts all the risk of cost overruns due either to mismanagement or exogenous factors such as changes in prices of inputs and labor to the outside supplier. While this may be considered unfair, particularly in the regulatory context, one can argue that in an unregulated market all risks are borne by the firm. To the extent that a power supplier's profits are unregulated (i.e., there is no stipulated rate-of-return), a competitive bidding mimics market conditions and justifies shifting of risk to the power supplier. However, the

power supplier may demand a higher premium for bearing the risk than it would otherwise do; this factor may generally raise the bid price. It would require empirical verification to decide which option (fixed price vs. adjustable price) would minimize the expected cost on the bid-taker. The fact that the electricity industry is entering an era of increased competition arguably provides a rationale for fixed price contracts.

In particular, if a power transaction involves an affiliate with common ownership interest in the utility, a fixed price contract has additional justification. The affiliate gets the support of credit and faith of the utility either directly or through a parent holding company, and the risk distribution resulting from the nature of the contract may be viewed as an internal risk-sharing arrangement. Also, since the credit and faith of the utility derive significantly from the facts that it is regulated with assurance of recovery of all prudently-incurred costs, and that ratepayers may be viewed to have implicit "beneficial ownership" of utility assets and capital, the affiliate benefits from the relationship by arguably having its cost of capital lowered.⁹ Therefore, an affiliated company may be better able to bear the risk of a fixed price contract than an unaffiliated company.

Favor Cost-Sharing Contracts with Low-Sharing Fractions

If, for any number of reasons, a fixed price contract is not considered an optimal risk-sharing arrangement, the next alternative is a cost-sharing contract. A cost-sharing contract stipulates a sharing of costs that exceed or are below a

⁹ For a discussion of the ratepayers' beneficial ownership of utility assets in the context of emission allowances, see Kenneth Rose, Robert E. Burns, Jay S. Coggins, Mohammad Harunuzzaman, and Timothy W. Viezer, *Public Utility Implementation of the Clean Air Act's Allowance Trading Program* (Columbus, OH: The National Regulatory Research Institute, May 1992), 145-55.

certain benchmark. For reasons similar to those discussed above, PUCs may prefer to approve cost-sharing contracts with low (utility) sharing fractions. A low sharing fraction puts the bulk of the risk on the power supplier and, therefore, provides strong incentives for cost minimization and efficient management. However, such contracts may also raise the cost of the contract.

Discourage/Prohibit Contracts with Take-or-Pay Clauses

A PUC may consider not approving contracts that have take-or-pay clauses for future energy supplies. Take-or-pay clauses weaken incentives for cost minimization. Also, the possibility of developing a wholesale spot market for electricity would conflict with the requirements of a take-or-pay because such an arrangement would preclude the utility from buying lower-cost power from the spot market. The absence of a take-or-pay clause in the contract would put the price risk on the NUG, and provide an incentive to compete efficiently with rivals and to minimize costs.

However, the exclusion of take-or-pay clauses in a power purchase contract may cause the supplier to demand a risk premium on the price of the contract. This would result in a higher cost of power to the utility. The possibility of vigorous wholesale competition, however, puts the utility in a better bargaining position and would push the premium to a minimum. Overall, exclusion of take-or-pay provisions appears to be a reasonable option, given the competitive outlook of the industry.

Discourage/Prohibit Contracts with Cost-Escalation Clauses or Require Them to be Based on Market Indices

The PUC may wish to consider discouraging or prohibiting contracts with cost-escalation clauses. Although the argument for excluding cost-escalation clauses for construction costs is relatively straight forward, there may be some rationale for including them for fuel and other operating costs. If cost-escalation clauses are to be

included in the contract, they should be based on some industry-wide or economy-wide market index.

Establish Cap on Purchased Power

Regulators could establish a benchmark for the purpose of imposing a limit or cap on the price of purchased power. The FERC, which regulates the wholesale price of electricity, has opposed market-based prices for affiliated transactions when a supplier possesses market power.¹⁰ The FERC has taken the position that the price of wholesale power should be either cost-based or compatible with competitive market conditions.

Although state commissions do not have the legal authority to establish wholesale prices, most if not all have authority to disallow power costs in the retail rates of a buying utility when lower-cost, comparable sources of power are available.¹¹ Consequently, the states could set a point of reference for affiliated purchased power, for example the spot price of electricity, that hinges on the price and availability of other sources of power. One major difficulty is that calculating cap parameters would be contentious and controversial.

¹⁰ Bernard W. Tenenbaum and J. Stephen Henderson, "Market-Based Pricing of Wholesale Electric Services," *The Electricity Journal* 4, no. 10 (December 1991): 30-45.

¹¹ In a 1991 survey conducted by the U.S. General Accounting Office, forty state commissions (out of forty-eight that responded) indicated that they have this authority, even without codification of the Pike County Doctrine (giving states the legal authority to assess the prudence of a utility purchasing power from certain suppliers).

Sever Retail Prices from Utility Costs

One general approach for restraining self-dealing is to sever retail prices from the cost of service.¹² This requires that the retail price of electricity depends on factors other than a utility's own revenue requirements. For example, allowable price changes may reflect exogenous factors, such as the overall economy-wide price index and the productivity growth of the electric power industry. Under such a retail rate-making scheme, if a utility pays an inflated price for affiliated power, it would not (directly) show up in retail prices. Consequently, sources of alternate affiliated and nonaffiliated power would be on a "level playing field." Under this approach, the buying utility should have an incentive to purchase power from the lowest-price source. Traditional cost-of-service regulation may fail to give utilities that incentive.¹³

The major difficulty of this approach is that establishing indices for setting retail prices may be contentious.

Base Cost Recovery and Revenues on Performance Indices

PUCs may wish to base cost recovery and revenues on performance indices. The underlying approach popularly known as "performance-based regulation," or

¹² For an explanation of such a scheme, see Wayne P. Olson and Kenneth W. Costello, "Electricity Matters: A New Incentives Approach for a Changing Electric Industry," *The Electricity Journal* 8, no. 1 (January/February 1995): 28-40.

¹³ See, for example, Paul L. Joskow, "Expanding Competitive Opportunities in Electricity Generation," *Regulation* (Winter 1991): 25-37.

PBR¹⁴ could also lessen the self-dealing problem.¹⁵ As an application of this regulatory approach, opportunities to earn higher profits could be based on the utility's performance in purchasing power. As a result, the utility should have an incentive to keep costs down or to transact power purchases in the best interest of retail customers. This presumes that an appropriate incentive scheme could be designed that would produce economic gains for both a utility and its customers.¹⁶

Performance-based mechanisms encompass targeted ones that apply only to purchased power and comprehensive mechanisms that pertain to the overall operations of the utility.¹⁷ For either kind of incentive, the utility's prices would not correspond on a one-to-one basis to its actual or reported costs. Consequently, the utility's ability to shift inflated prices for affiliated power to retail customers would diminish.

Allow or Encourage Retail Competition

To the extent that they are legally sanctioned, state commissions could allow and encourage wide-spread retail competition.¹⁸ With the ability of retail customers to choose from different power suppliers, the local utility would have less opportunity to pass through inflated prices for affiliated transactions. The reason for this is that

¹⁴ The current usage of the term "performance-based regulation" is somewhat misleading, because all regulation may be viewed as performance-based.

¹⁵ For a discussion of performance-based regulation in the electric power industry, see Mohammad Harunuzzaman et al., *Regulatory Practices and Innovative Generation Technologies: Problems and New Rate-Making Approaches* (Columbus, OH: The National Regulatory Research Institute, 1994).

¹⁶ Such a win-win incentive mechanism may be harder to implement than what it first seems.

¹⁷ Both kinds of mechanisms are discussed in Harunuzzaman et al., *Regulatory Practices and Innovative Generation Technologies: Problems and New Rate-Making Approaches*.

¹⁸ A discussion of retail wheeling from a legal perspective is contained in Kenneth W. Costello, Robert E. Burns, and Youssef Hegazy, *Overview of Issues Relating to the Retail Wheeling of Electricity* (Columbus, OH: The National Regulatory Research Institute, 1994), 35-54.

market prices would become more transparent for all customers. Retail wheeling and direct customer access done well may, in fact, be the best insurances against abusive self-dealing. However, retail competition done poorly may place additional pressure for price increases to core customers and may cause undue price discrimination.

CHAPTER 7

SUMMARY AND CONCLUSIONS

Most observers would agree that the emerging competitive environment in the electricity industry warrants a general reorientation of the regulatory focus to better promote economic efficiency. Inefficient or abusive self-dealing constitutes one particular form of utility inefficiency. Our examination of self-dealing in the foregoing chapters indicates that the same regulatory approaches that promote economic efficiency should restrain abusive self-dealing. Such approaches embody greater reliance on markets than on regulatory scrutiny and oversight. The following general considerations and approaches are recommended in addressing self-dealing abuse by utilities.

Self-Dealing Should Not Be Viewed As Inherently Abusive

The growing markets for wholesale power and the emergence of markets for retail power may make abusive self-dealing less attractive for many utilities. In that case, the use of regulatory authority to completely restrict self-dealing (e.g., requiring divestiture of an affiliate, prohibiting self-dealing transactions, or excluding the utility or an affiliate from a competitive bidding process) may be counter-productive. The critical consideration in evaluating self-dealing is the competitiveness of the wholesale market, the status of the retail market in the utility's service area, and the market power enjoyed by the utility. The more competitive the wholesale market, the greater the options available to retail customers, and the weaker the market power of the utility, the stronger the logic for allowing self-dealing. If the opposite is true for one or more of the above criteria, the argument becomes stronger for either prohibiting or restricting self-dealing.

There Should Be a Preference for Market-Based Approaches

Other things being equal, a market-based regulatory option should be preferred over a regulatory oversight option. Generally, there is an entire spectrum of options that vary on their relative reliance on markets (Table 6-4). For example, severing retail prices from the utility's costs represents a pure market-based option; prohibition of affiliate transactions represents a pure "command-and-control" option; and competitive bidding with commission oversight represents a mixed option. For each regulatory commission, the choice of the regulatory option should depend on the particular characteristics of the regulated utility, and the characteristics of the wholesale and the retail markets. Strongly competitive conditions call for market-based options, while significant departure from competitive conditions warrants a corresponding degree of oversight from the commission.

Regulatory Options Can Be Combined

Certain regulatory options can be complementary and mutually reinforcing. For example, a state commission can establish a cap for purchased power, and encourage or mandate competitive bidding with the cap as the benchmark or the proxy "avoided cost." Then the bidders will compete to come under the cap, which could be based on a market index. The commission can make this option attractive by including a sharing rule by which the utility, the supplier and ratepayers share the difference between the cap and the price of the purchased power.¹ Similar combinations of other options (Table 6-4) are possible and should be explored.

Certain combinations of regulatory options, however, may be incompatible or redundant. For example, if retail prices are severed from the utility's cost-of-service,

¹ One can argue that the utility should not receive additional "incentives" for making economical purchases of power. For such an argument, see Scott Hempling, "Incentives for Purchased Power: Compensation for Risk or Reward for Inefficiency?" *The Electricity Journal* (August/September 1993): 42-45.

commission oversight of the competitive bidding process becomes unnecessary and wasteful. State commissions may wish to examine such incompatibilities in combining regulatory options.

The Interests of Captive Customers Should Be Protected

Some of the regulatory options, particularly the market-based ones, may allow the utility to discriminate against core or "captive" customers—customers with limited alternatives. In choosing such regulatory options, regulators also need to institute protection against such discrimination. For example, if retail prices are severed from the utility's own cost of service (Table 6-4), the state commission may wish to cap the rates charged to core customers. Otherwise, the utility may be able to subsidize its competitive operations with revenues from its monopoly operations, namely the revenues received from core customers.

The Choice of Regulatory Options Are Unique for Each Commission

It is intuitively clear that no general regulatory prescription can be offered that would apply equally well to each state commission, or even to each electric utility within a particular state. State commissions vary in terms of authority, regulatory precedents, history, and the characteristics of the utilities regulated. Each factor has an influence on how best to devise regulatory policy to restrain abusive self-dealing. Furthermore, broader economic considerations and political realities will continue to influence regulatory policies, including those that address self-dealing. In crafting such policies, regulators can examine the various options discussed (Table 6-4), and their relative advantages and disadvantages, to find the ones that are most suited for their jurisdictional utilities.

APPENDIX

SURVEY RESULTS ON STATE PUC REGULATION OF SELF-DEALING TRANSACTIONS

Introduction

The NRRRI conducted a survey to determine the current status of state PUC regulation of self-dealing transactions. The survey was initiated during November and December of 1994. Survey responses were received and accepted until September 1995. A total of forty-five survey responses were received.

The Survey Instrument

The survey instrument is presented in the following pages.

SURVEY INSTRUMENT: SELF-DEALING TRANSACTIONS

*The National Regulatory Research Institute
November 1994*

Instructions

1. Please check or circle the appropriate answer. For many of the questions, we would appreciate any additional comments that explain your answers. Please attach extra pages and supporting documentation as necessary and appropriate.
2. Please fax the completed form (without attachments) *by November 16, 1994* to Anthony Cooley, NRRI, Fax # (614) 292-7196.
3. Please mail the completed form an attachments *by November 23, 1994* to Anthony Cooley, The National Regulatory Research Institute, Columbus, Ohio 43210. If you have questions, please call Anthony Cooley at (614) 292-9668.

Respondent Information

Name of Respondent:

Position:

Phone No.:

Fax No.:

Commission Name and Address:

Definition of Self-Dealing Transactions

Transactions that constitute or result from an arrangement for a utility to provide its own power or to purchase power form an affiliate.

If a question has more than one answer, please check or circle all that apply.

1. Your public utility commission (PUC) has oversight authority over
 - a. the establishment of a utility affiliate
 - b. the operation of a utility affiliate
 - c. the divestiture/sale of a utility affiliate
 - e. none of the above

If the answer to question 1 is e, go to question 5. Otherwise, provide a brief explanation of your answer and go to the following question.

2. Your PUC's authority, as stated in question 1, is based on
 - a. state constitution
 - b. state statutes

Provide a brief explanation to your answer and attach supporting documentation.

3. Your PUC has set up criteria or requirements as conditions for approving the establishment of a utility affiliate.
 - a. true
 - b. false

If the answer to question 3 is b, go to question 5. Otherwise, go to the following question.

4. The criteria mentioned in question 3 addresses, explicitly or implicitly, power procurement transactions between the affiliate and the utility.

a. true

b. false

If the answer is a, briefly summarize the criteria.

5. Your PUC has authority to approve, prohibit, or regulate self-dealing transactions.

a. true

b. false

* If the answer to question 1 is b, go to question 17. If the answer is a, go to the following question.

6. The authority is based on the following

a. state constitution

b. state statutes

c. PUC authority as stated in question 1 and/or criteria as stated in question 4

d. other

Provide a brief explanation of your answer and attach supporting documentation.

* This instruction was dropped subsequently when it was found that it inadvertently caused exclusion of some important information. Respondents were informed of the change and were allowed to revise their responses.

7. The state constitution and/or state statutes attach conditions that apply to state PUC approval, prohibition, or regulation of self-dealing transaction.

- a. true
- b. false

Provide a brief explanation (including a list of conditions) of your answer and attach supporting documentation.

8. Your PUC has the following general policy regarding self-dealing proposals.

- a. unconditional approval
- b. approval subject to future review of actual transactions
- c. approval subject to specific criteria and future review of actual transactions
- d. unconditional rejection
- e. other

Provide a brief explanation of your answer (including a list of applicable criteria) and supporting documentation.

9. Which of the following procedures is used to review actual transactions (the contract and subsequent purchases) between a utility and affiliate?
- a. a general rate case
 - b. a prudence review
 - c. an IRP hearing
 - d. other

Provide a brief explanation of your answer and attach supporting documentation.

10. One or more utility under your PUC's jurisdiction submitted proposals involving purchases from an affiliate during the last ten years.
- a. true
 - B. false

If the answer to question 10 is b, go to question 12. Otherwise, go to the following question.

11. During the past ten years, your PUC took the following action on utility proposals involving power purchases from an affiliate.
- a. approved all proposals
 - b. approved some of the proposals
 - c. approved none of the proposals

12. Your PUC allows power procurement from a NUG through
- a. competitive bidding only
 - b. both competitive bidding and sole-source procurement

13. Your PUC allows
- a. an affiliate to bid
 - b. the host utility to bid
 - d. neither an affiliate nor the host utility to bid

Briefly summarize those aspects of the bidding procedures approved or mandated by your PUC that potentially affect self-dealing.

14. Your PUC allows
- a. sole-source procurement from an affiliate
 - b. sole-source procurement from an affiliate subject to criteria
 - c. sole-source procurement from unaffiliated entities only

Provide a brief explanation of your answer (including a list of applicable criteria)

15. Your PUC issued a ruling or order that specifically states the merits or demerits of self-dealing.

- a. true
- b. false

If the answer is a, provide a brief explanation and attach supporting documentation.

16. In your opinion, allowing self-dealing has benefited ratepayers in the past.

- a. agree
- b. disagree
- c. neither agree nor disagree
- d. no self-dealing took place

Provide a brief explanation of your answer.

17. Since the enactment of the Energy Policy Act (EPAct) of 1992, has your PUC ruled on a proposal involving an exempt wholesale generator (EWG)?

- a. yes
- b. no

If the answer is b, go to question 19. Otherwise, go to the following question.

18. Did your PUC articulate a position with regard to section 711 of EPAct that

requires state commissions to review whether self-dealing would benefit consumers, is in the public interest, does not violate state law, and would not give an affiliate EWG an unfair competitive advantage?

a. yes

b. no

If the answer is a, provide a brief explanation and supporting documentation.

19. Has your PUC's position on self-dealing of electricity changed in the last ten years?

a. yes

b. no

Please provide a brief explanation of your answer and supporting documentation.

20. Do you anticipate any change in your PUC's position on self-dealing of electricity in the future?

a. yes

b. no

Provide a brief explanation of your answer and attach supporting documentation.

21. Please list any additional comments that pertain to any of the questions or the general subject of self-dealing.

Issues Investigated

The survey investigated a number of broad areas. These areas include PUC authority and exercise of such authority over utility diversification, specific PUC authority to allow, prohibit or otherwise regulate self-dealing transactions, regulatory policies or procedures used to regulate or otherwise materially affect self-dealing transactions, PUC oversight of the power-procurement process, PUC position on self-dealing, PUC response to EAct provisions on self-dealing transactions, and finally anticipated future PUC position on self-dealing transactions.

Questions on PUC authority over utility diversification concern the establishment or the operation of an affiliate and the divestiture or sale of a utility affiliate. Respondents were also queried about the source of PUC authority, such as the state constitution or state statutes, and whether the PUC has set up criteria as conditions for establishment of an affiliate. A supplemental question inquired whether such criteria explicitly or implicitly address self-dealing transactions.

Questions about specific PUC authority to regulate self-dealing transactions concern whether such authority is based on PUC authority on utility diversification, or independently resides in the constitution or state statutes.

Questions about PUC policies and procedures on self-dealing transactions concerned general PUC policy and specific regulatory procedures used to address self-dealing, and past PUC decisions regarding self-dealing transactions.

Questions about PUC oversight of the power-procurement process inquired whether competitive bidding alone is used for power procurement, whether the PUC has any specific eligibility criteria that would either allow or disallow a utility or its affiliates to supply power either through bidding or through directly negotiated contracts (sole-source procurement).

Questions about PUC position on self-dealing queried whether there are PUC rulings or orders that specifically state merits and demerits of self-dealing, and whether the respondent thinks self-dealing has benefited ratepayers in the past.

Questions on PUC posture regarding EAct provisions on self-dealing concerned whether the PUC has ruled on proposals regarding EWG and whether the PUC has articulated a position regarding section 711 of EAct which requires a state PUC to review whether self-dealing would benefit customers, is in the public interest, does not violate state laws, and would not give an affiliate EWG an unfair competitive advantage.

Questions about the evolution of PUC policy inquired about whether the PUC changed its policy on self-dealing in the past and whether changes are anticipated in the future.

Summary of Survey Responses

Commission Authority over Utility Diversification

The survey responses regarding utility diversification are shown in Tables A-1 and A-2. Twenty-five of forty-five responses were that the commission held no oversight authority over utility diversification. Among these, the state of New Hampshire PUC reported that it has oversight authority over the establishment of a utility affiliate only if the affiliate is established by the sale or lease transfer of utility property. Fourteen states have authority over the establishment of utility affiliates, fifteen have authority over the operations of an affiliate and fifteen have authority over utility divestiture. Of the states that have authority over the establishment of utility affiliates, each commission, except Arizona and Louisiana, derive their authority from state statutes. The Arizona Corporation Commission bases its authority to oversee the establishment of utility affiliates on the state constitution, as well as the Commission's rules. The Louisiana PSC derives the authority from its state statutes, as well as the state's constitution.

TABLE A1

OVERSIGHT AUTHORITY OVER ESTABLISHMENT, OPERATION, AND
DIVESTITURE OF AN AFFILIATE: RESPONSE TO QUESTIONS 1 AND 2

State	Establishment	Operation	Divestiture	Basis
Alabama	No	No	No	N/A
Alaska	Yes	Yes	Yes	SS
Arizona	Yes	No	Yes	SC
Arkansas	No	No	No	NA
California	NR	NR	NR	NR
Colorado	No	No	No	NA
Connecticut	No	No	No	NA
Delaware	NR	NR	NR	NR
District of Columbia	Yes	Yes	Yes	SS
Florida	No	No	No	NA
Georgia	No	No	No	NA
Hawaii	No	No	No	NA
Idaho	No	No	No	NA
Illinois	Yes	No	Yes	SS
Indiana	No	No	No	NA
Iowa	No	No	No	NA
Kansas	No	No	Yes	SS
Kentucky	No	No	No	NA
Louisiana	Yes	Yes	Yes	SS
Maine	No	No	No	NA
Maryland	No	No	No	NA
Massachusetts	NR	NR	NR	NR
Michigan	No	Yes	No	SS

-- Table Continued --

TABLE A1 — Continued

State	Establishment	Operation	Divestiture	Basis
Minnesota	No	No	No	NA
Mississippi	Yes	Yes	Yes	SS
Missouri	Yes	Yes	Yes	SS
Montana	Yes	Yes	Yes	SS
Nevada	No	No	No	NA
New Hampshire	No	No	No	NA
New Jersey	NR	NR	NR	NR
New Mexico	Yes	Yes	Yes	NA
New York	Yes	Yes	No	SS
North Carolina	No	No	No	NA
North Dakota	No	No	No	NA
Ohio	No	No	No	NA
Oklahoma	No	No	No	NA
Oregon	No	Yes	No	SS
Pennsylvania	Yes	No	No	SS
Rhode Island	No	Yes	No	SS
South Carolina	No	No	No	NA
South Dakota	No	No	No	NA
Tennessee ¹				
Texas	No	Yes	No	NA
Utah	No	No	No	NA
Vermont	No	No	No	NA
Virginia	Yes	Yes	Yes	SS
Washington	No	No	No	NA

— Table Continued —

TABLE A1 — <u>Continued</u>				
State	Establishment	Operation	Divestiture	Basis
West Virginia	Yes	Yes	Yes	SS
Wisconsin	Yes	Yes	Yes	SS
Wyoming	No	No	Yes	SS

¹ The Tennessee Public Service Commission (PSC) was not surveyed because most of the state's electric power is supplied by The Tennessee Valley Authority (TVA), a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: NA: Not applicable
NR: Response not available
SC: State constitution
SS: State statutes

TABLE A2		
CRITERIA FOR ESTABLISHING AFFILIATES: RESPONSE TO QUESTIONS 3 AND 4		
State	PUC Has Criteria for Establishing Affiliates	Criteria Address Self- Dealing Transactions
Alabama	NA	NA
Alaska	Yes	No
Arizona	Yes	Yes
Arkansas	NA	NA
California	NR	NR
Colorado	NA	NA
Connecticut	NA	NA
Delaware	NR	NR
District of Columbia	No	No
Florida	NA	NA
Georgia	NA	NA
Hawaii	NA	NA
Idaho	NA	NA
Illinois	Yes	No
Indiana	NA	NA
Iowa	NA	NA
Kansas	No	Yes
Kentucky	NA	NA
Louisiana	Yes	Yes
Maine	No	No
Maryland	NA	NA
Massachusetts	NR	NR
Michigan	No	NA

-- Table Continued --

TABLE A2 — <u>Continued</u>		
State	PUC Has Criteria for Establishing Affiliates	Criteria Address Self-Dealing Transactions
Minnesota	NA	NA
Mississippi	No	NA
Missouri	No	NA
Montana	No	NA
Nevada	No	NA
New Hampshire	No	NA
New Jersey	NR	NR
New Mexico	Yes	Yes
New York	Yes	Yes
North Carolina	NA	NA
North Dakota	NA	NA
Ohio	NA	NA
Oklahoma	NA	NA
Oregon	No	No
Pennsylvania	No	NA
Rhode Island	No	NA
South Carolina	NA	NA
South Dakota	NA	NA
Tennessee ¹		
Texas	No	NA
Utah	NA	NA
Vermont	Yes	No
Virginia	Yes	No
Washington	NA	NA

— — Table Continued — —

TABLE A2 — <u>Continued</u>		
State	PUC Has Criteria for Establishing Affiliates	Criteria Address Self-Dealing Transactions
West Virginia	No	NA
Wisconsin	Yes	No
Wyoming	No	No

¹ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: NA: Not applicable
 NR: Response not available
 SC: State constitution
 SS: State statutes

Nine commissions have established criteria as conditions for the establishment of an utility affiliate; this represents more than half of the fourteen commissions that have authority over the establishment of utility affiliates. Of these nine commissions, five commissions, namely Arizona, Louisiana, New Mexico, and New York, address power procurement transactions between a utility and an affiliate.

Commission Authority to Regulate Self-Dealing Transactions

Table A-3 shows the responses to questions regarding authority to regulate self-dealing transactions. All except six commissions, namely Colorado, Illinois, Indiana, Iowa, Kentucky, and Oklahoma, have the authority to approve, prohibit, or otherwise regulate self-dealing transactions. Five commissions, namely Arizona, Arkansas, Connecticut, Louisiana, and Maine, derive their authority the state constitution. Thirty-one commissions report that their authority on self-dealing transactions is based on state statutes. The Alaska Commission finds its authority over self-dealing transactions from its general oversight authority over utility affiliates. State commissions in Missouri, Montana, and Rhode Island have authority over self-dealing transactions with a dual basis; power given to them by state statutes combined with the authority they possess over establishment of utility affiliates. The Idaho PUC's authority does not have any of the previously mentioned bases, its authority over self-dealing transactions is solely based on the necessity to ensure just and fair utility rates.

Of those commissions that derive their authority from its state constitution or state statutes, seventeen report that conditions are attached that apply to the commission's approval, prohibition, or regulation of self-dealing transactions.

TABLE A3			
AUTHORITY TO REGULATE SELF-DEALING TRANSACTIONS: RESPONSE TO QUESTIONS 5, 6, AND 7			
State	Authority to Regulate	Basis of Authority	Conditions Attached
Alabama	Yes	SS	No
Alaska	Yes	SS	Yes
Arizona	Yes	SC	No
Arkansas	Yes	SC	No
California	NR	NR	NR
Colorado	No	NA	NA
Connecticut	Yes	SC	No
Delaware	NR	NR	NR
District of Columbia	Yes	SS	No
Florida	Yes	SS	No
Georgia	Yes	SS	Yes
Hawaii	Yes	SS	Yes
Idaho	Yes	CR	No
Illinois	No	NA	NA
Indiana	No	NA	NA
Iowa	No	NA	NA
Kansas	Yes	SS	Yes
Kentucky	No	NA	NA
Louisiana	Yes	SC	No
Maine	Yes	SC	Yes
Maryland	Yes	SS	No
Massachusetts	NR	NR	NR
Michigan	Yes	SS	Yes

-- Table Continued --

TABLE A3 — <u>Continued</u>			
State	Authority to Regulate	Basis of Authority	Conditions Attached
Minnesota	Yes	SS	Yes
Mississippi	Yes	SS	Yes
Missouri	Yes	SS	No
Montana	Yes	SS	Yes
Nevada	Yes	SS	No
New Hampshire	Yes	SS	No
New Jersey	NR	NR	NR
New Mexico	Yes	SS	Yes
New York	Yes	SS, Q1, Q4	Yes
North Carolina	Yes	SS	No
North Dakota	Yes	SS	No
Ohio	NA	NA	NA
Oklahoma	No	NA	NA
Oregon	Yes	SS	Yes
Pennsylvania	Yes	SS	Yes
Rhode Island	Yes	SS	No
South Carolina	Yes	SS	No
South Dakota	Yes	SS	No
Tennessee ¹			
Texas	Yes	SS	Yes
Utah	Yes	SS	No
Vermont	Yes	SS	No
Virginia	Yes	SS	Yes
Washington	Yes	SS	Yes

— — Table Continued — —

TABLE A3 — <u>Continued</u>			
State	Authority To Regulate	Basis of Authority	Conditions Attached
West Virginia	Yes	SS	Yes
Wisconsin	Yes	SS	Yes
Wyoming	Yes	SS	No

¹ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: CR: Commission authority to regulate rates
 NA: Not applicable
 NR: Response not available
 Q1: Authority as stated in Question 1
 Q4: Criteria as stated in Question 4
 SC: State constitution
 SS: State statutes

Commission Policy Regarding Self-Dealing Proposals

The survey responses to questions on general commission policy regarding self-dealing power-procurement proposals are shown in Table A-4. Of the commissions with authority to regulate self-dealing transactions, none has a general policy of granting unconditional approval. The general policy of eight commissions is to grant approval of self-dealing proposals subject to future review of actual transactions. Twenty commissions approve self-dealing proposals if certain criteria are met and the proposals are also subject to future review of actual transactions. The Wisconsin PSC considers proposals case-by-case and approves a proposal only if conditions, reporting requirements, and future reviews of actual transactions can reasonably assure the Commission that ratepayers will not be harmed by their approval. The commissions of Arkansas, Minnesota, Missouri, North Carolina, and South Dakota have no general policy concerning self-dealing proposals. No commission unconditionally rejects self-dealing proposals. The Maryland PSC reviews all power purchase contracts for prior approval. The Montana PSC's general policy is to consider self-dealing proposals during rate case reviews.

Regulatory Procedures for Overseeing Self-Dealing Transactions

The survey responses to questions regarding regulatory procedures for overseeing self-dealing transactions are shown in Table A-5. The survey found that the primary procedures used by commissions to review actual transactions (the contract and subsequent purchases) between a utility and an affiliate were general rate cases (thirty states) and prudence reviews (sixteen states). FAC hearings are used by three states, namely Florida, South Carolina, and West Virginia, to review self-dealing transactions. Nine states use IRP hearings to address self-dealing transactions. Five states, namely Illinois, Maryland, Michigan, Oregon, and Pennsylvania, have a preapproval mechanism for power purchase contracts. The

TABLE A4

GENERAL POLICY OF PUCs REGARDING SELF-DEALING TRANSACTIONS:
RESPONSE TO Q8

State	Unconditional Approval	Approval Subject to Future Review	Approval Subject to Criteria and Future Review	Unconditional Rejection	Other	Not Applicable
Alabama		X				
Alaska			X			
Arizona			X			
Arkansas					X	
California						X
Colorado			X			
Connecticut			X			
Delaware						
District of Columbia					X	
Florida					X	
Georgia			X			
Hawaii		X				

--- Continued ---

TABLE A4 -- Continued

State	Unconditional Approval	Approval Subject to Future Review	Approval Subject to Criteria and Future Review	Unconditional Rejection	Other	Not Applicable
Idaho			X			
Illinois					X	
Indiana						X
Iowa						X
Kansas			X			
Kentucky					X ¹	
Louisiana			X			
Maine					X	
Maryland					X	
Massachusetts						
Michigan			X			
Minnesota					X	
Mississippi			X			
Missouri					X	

-- Continued --

TABLE A4 — Continued

State	Unconditional Approval	Approval Subject to Future Review	Approval Subject to Criteria and Future Review	Unconditional Rejection	Other	Not Applicable
Montana					X	
Nevada					X	
New Hampshire			X			
New Jersey						
New Mexico			X			
New York			X			
North Carolina					X	
North Dakota		X				
Ohio						X
Oklahoma					X	
Oregon			X			
Pennsylvania						
Rhode Island			X		X	
South Carolina		X	X			

— Continued —

TABLE A4 -- Continued

State	Unconditional Approval	Approval Subject to Future Review	Approval Subject to Criteria and Future Review	Unconditional Rejection	Other	Not Applicable
South Dakota					X	
Tennessee ²						
Texas		X				
Utah		X				
Vermont			X			
Virginia			X			
Washington			X			
West Virginia		X				
Wisconsin					X	
Wyoming		X	X			

¹ No general policy.

² The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

TABLE A5
REGULATORY PROCEDURE TO OVERSEE SELF-DEALING TRANSACTIONS:
RESPONSE TO QUESTION 9

State	General Rate Case	Prudence Review	Fuel Adjustment Clause Hearings	Integrated Resource Planning Hearings	Preapproval	Other	Not Applicable	Response Not Available
Alabama		X						
Alaska		X						
Arizona	X							
Arkansas	X	X						
California								X
Colorado	X	X		X			X	
Connecticut	X	X		X				
Delaware								X
District of Columbia	X					X		
Florida	X		X			X		
Georgia				X		X		
Hawaii	X					X		

--- Continued ---

TABLE A5 — Continued

State	General Rate Case	Prudence Review	Fuel Adjustment Clause Hearings	Integrated Resource Planning Hearings	Preapproval	Other	Not Applicable	Response Not Available
Idaho	X							
Illinois					X			
Indiana	X	X				X		
Iowa							X	
Kansas	X							
Kentucky	X							
Louisiana		X				X		
Maine		X						
Maryland					X			
Massachusetts								X
Michigan					X			
Minnesota						X		
Mississippi	X	X						
Missouri	X	X		X				

--- Continued ---

TABLE A5 -- Continued

State	General Rate Case	Prudence Review	Fuel Adjustment Clause Hearings	Integrated Resource Planning Hearings	Preapproval	Other	Not Applicable	Response Not Available
Montana	X							
Nevada	X	X						
New Hampshire	X	X		X				
New Jersey								X
New Mexico	X	X				X		
New York	X			X				
North Carolina	X	X		X				
North Dakota	X							
Ohio							X	
Oklahoma	X							
Oregon	X				X			
Pennsylvania	X				X			
Rhode Island						X		
South Carolina	X		X					

-- Continued --

TABLE A5 -- Continued

State	General Rate Case	Prudence Review	Fuel Adjustment Clause Hearings	Integrated Resource Planning Hearings	Preapproval	Other	Not Applicable	Response Not Available
South Dakota						X		
Tennessee ¹								
Texas	X			X		X		
Utah	X					X		
Vermont	X	X						
Virginia	X					X		
Washington	X	X				X		
West Virginia	X		X	X		X		
Wisconsin						X		
Wyoming						X		

¹ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

District of Columbia PSC uses audits and other investigations to review transactions between a utility and affiliate. General orders are used by the Louisiana PSC. The South Dakota PSC employs a case-by-case approach when dealing with this issue. Finally, the Wisconsin PSC reviews transactions and contracts through holding company audits, gas procurement audits, fuel procurement audits, and other audits.

Past PUC Action on Self-Dealing Proposals

Past PUC actions on self-dealing proposals are shown in Table A-6. Twenty-three commissions received proposals involving power purchases from a utility affiliate. Seven commissions report that they have approved all power purchase proposals from an affiliate. Thirteen commissions report approval of some, but not all, of the proposals involving power purchase from an affiliate.

Commission Oversight of the Power Procurement Process

Survey responses on commission oversight over the power procurement process are shown in Tables A-7, A-8, and A-9. Competitive bidding is used in twenty-eight states. Twenty-eight states allow sole-source procurement. Five states, namely Connecticut, Florida, Montana, Virginia, and Wisconsin, allow competitive bidding only. Twenty-three commissions allow both competitive bidding and sole-source procurement. The District of Columbia commission allows only sole-source procurement. Thirteen commissions either did not have an occasion to consider a formal policy on power procurement mechanisms or do not have such a policy in place.

On the issue of parties eligible to bid (Table A-8), the survey responses indicate that nine states exclude the host utility from bidding and six states exclude utility affiliates from bidding. In sixteen states both the host utility and an affiliate

TABLE A6				
PAST PUC ACTION ON SELF-DEALING PROPOSALS: RESPONSE TO QUESTIONS 10 AND 11				
State	Proposal(s) Submitted	<u>Approved Proposal(s)</u>		
		All	Some	None
Alabama	No			
Alaska	No			
Arizona	Yes		X	
Arkansas	No			
California	NR			
Colorado	No	NA	NA	NA
Connecticut	No			
Delaware				
District of Columbia	No			
Florida	Yes	X		
Georgia	No			
Hawaii	Yes	X		
Idaho	Yes	X		
Illinois	No	NA	NA	NA
Indiana	Yes ¹			
Iowa	No	NA	NA	NA
Kansas	Yes	X		
Kentucky	No	NA	NA	NA
Louisiana	No			
Maine	Yes		X	
Maryland	No			
Massachusetts				

-- Continued --

TABLE A6 -- Continued

State	Proposal(s) Submitted	<u>Approved Proposal(s)</u>		
		All	Some	None
Michigan	Yes		X	
Minnesota	No			
Mississippi	Yes		X	
Missouri	No			
Montana	Yes		X	
Nevada	Yes			X
New Hampshire	Yes		X	
New Jersey				
New Mexico	No	NA	NA	NA
New York	Yes		X	
North Carolina	No	NA	NA	NA
North Dakota	No			
Ohio	No			
Oklahoma	No	NA	NA	NA
Oregon	No			
Pennsylvania	Yes		X	
Rhode Island	Yes	X		
South Carolina	No			
South Dakota	Yes	X		
Tennessee ²				
Texas	Yes		X	
Utah	Yes		X	
Vermont	Yes		X	
Virginia	Yes	X		

-- Continued --

TABLE A6 — <u>Continued</u>				
State	Proposal(s) Submitted	<u>Approved Proposal(s)</u>		
		All	Some	None
Washington	Yes		X	
West Virginia	No			
Wisconsin	Yes ³			
Wyoming	Yes		X	

¹ No PUC action needed (other than prudence reviews) for transactions through a parent company.

² The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

³ One proposal submitted but withdrawn later.

Key: NA: Not applicable
NR: Response not available

TABLE A7
POWER PROCUREMENT MECHANISMS:
RESPONSE TO QUESTION 12

State	Competitive Bidding	Sole-Source Procurement
Alabama	Yes	Yes
Alaska	NA	NA
Arizona	Yes	Yes
Arkansas	NA	NA
California	NR	NR
Colorado	Yes	Yes
Connecticut	Yes	No
Delaware	NR	NR
District of Columbia	No	Yes
Florida	Yes	No
Georgia	Yes	Yes
Hawaii	No	Yes
Idaho	Yes	Yes
Illinois	NA	NA
Indiana	Yes ¹	Yes ¹
Iowa	NA	NA
Kansas	NA	NA
Kentucky	No	No
Louisiana	NA	NA
Maine	Yes	Yes
Maryland	Yes	Yes
Massachusetts	NR	NR
Michigan	Yes	Yes

-- Table Continued --

TABLE A7 — <u>Continued</u>		
State	Competitive Bidding	Sole-Source Procurement
Minnesota	Yes	Yes
Mississippi	Yes	Yes
Missouri	NA	NA
Montana	Yes	No
Nevada	Yes	Yes
New Hampshire	Yes	Yes
New Jersey	NR	NR
New Mexico	NA	NA
New York	Yes	Yes
North Carolina	Yes	Yes
North Dakota	NA	NA
Ohio	NA	NA
Oklahoma	NA	NA
Oregon	Yes	Yes
Pennsylvania	Yes	Yes
Rhode Island	Yes	Yes
South Carolina	NP	NP
South Dakota	NP	NP
Tennessee ²		
Texas	Yes	Yes
Utah	Yes	Yes
Vermont	Yes	Yes
Virginia	Yes	No
Washington	Yes	Yes

— — Table Continued — —

TABLE A7 — <u>Continued</u>		
State	Competitive Bidding	Sole-Source Procurement
West Virginia	No	Yes ³
Wisconsin	Yes	No
Wyoming	Yes	Yes

¹ Competitive bidding not required but is the general practice. Sole-source procurement not prohibited but unlikely.

² The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

³ Only sole-source procurement took place.

Key: NA: Not applicable
NP: No policy
NR: Response not available

TABLE A8		
PARTIES ALLOWED IN COMPETITIVE BIDDING: RESPONSE TO QUESTION 13		
State	Parties Allowed to Bid	
	Host Utility	Utility Affiliate
Alabama	Yes	Yes
Alaska	NA	NA
Arizona	NP	NP
Arkansas	NA ¹	NA ¹
California	NR	NR
Colorado	Yes	Yes
Connecticut	Yes	Yes
Delaware		
District of Columbia	NB	NB
Florida	Yes	Yes
Georgia	Yes	Yes
Hawaii	NB	NB
Idaho	Yes	
Illinois	Yes	Yes
Indiana	NA	NA
Iowa	NA	NA
Kansas	Yes ²	Yes ²
Kentucky	NA	NA
Louisiana	NA	NA
Maine	Yes	Yes
Maryland	Yes ³	No
Massachusetts	NR	NR

-- Table Continued --

TABLE A8 — <u>Continued</u>		
State	<u>Parties Allowed to Bid</u>	
	Host Utility	Utility Affiliate
Michigan	Yes	Yes
Minnesota	No	Yes
Mississippi	No	No
Missouri	NA ¹	NA ¹
Montana	No ¹	Yes
Nevada	No	No
New Hampshire	NP	NP
New Jersey	NR	NR
New Mexico	NA ¹	NA ¹
New York	No	Yes
North Carolina	NP ¹	NP ¹
North Dakota	NA ¹	NA ¹
Ohio	NA	NA
Oklahoma	NA	NA
Oregon	No	No
Pennsylvania	NP	NP
Rhode Island	No	Yes
South Carolina	NP ¹	NP ¹
South Dakota	NP ¹	NP ¹
Tennessee ⁴		
Texas	Yes	NP ¹
Utah	Yes	Yes
Vermont	Yes	Yes
Virginia	No	No

-- Table Continued --

TABLE A8 — <u>Continued</u>		
State	<u>Parties Allowed to Bid</u>	
	Host Utility	Utility Affiliate
Washington	No	No
West Virginia	NP	NP
Wisconsin	Yes	Yes
Wyoming	No	Yes

¹ Issue has not been addressed.

² If a utility voluntarily adopted a bidding procedure, both the host utility and an affiliate would probably be allowed to bid.

³ The host utility posts an avoided cost against which others bid.

⁴ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: NA: Not applicable
NB: No bidding
NP: No policy
NR: Response not available

TABLE A9			
REQUIREMENTS FOR SOLE-SOURCE PROCUREMENT: RESPONSE TO QUESTION 14			
State	<u>Sole-Source Procurement Allowed From:</u>		
	An Affiliate	An Affiliate Subject to Criteria	Unaffiliated Entities Only
Alabama	Yes	No	No
Alaska	NA	NA	NA
Arizona	NP	NP	NP
Arkansas	NA	NA	NA
California	NR	NR	NR
Colorado	No	Yes	No
Connecticut	No	No	No
Delaware	NR	NR	NR
District of Columbia	Yes	No	No
Florida	No	No	No
Georgia	Yes	No	No
Hawaii	No	Yes	No
Idaho	No	Yes	No
Illinois	NA	NA	NA
Indiana	Yes ¹	No	No
Iowa	NA	NA	NA
Kansas	NA	NA	NA
Kentucky	NA	NA	NA
Louisiana	NA	NA	NA
Maine	No	Yes	No
Maryland	NP ²	NP ²	NP ²
Massachusetts	NR	NR	NR

-- Table Continued --

TABLE A9 — <u>Continued</u>			
State	<u>Sole-Source Procurement Allowed From:</u>		
	An Affiliate	An Affiliate Subject to Criteria	Unaffiliated Entities Only
Michigan	No	Yes	No
Minnesota	NP ²	NP ²	NP ²
Mississippi	No	Yes	No
Missouri	NA ²	NA ²	NA ²
Montana	NP ²	NP ²	NP ²
Nevada	No	No	No
New Hampshire	No	Yes	No
New Jersey	NR	NR	NR
New Mexico	NA ²	NA ²	NA ²
New York	No	Yes	No
North Carolina	NP	NP	NP
North Dakota	NA ²	NA ²	NA ²
Ohio	NA	NA	NA
Oklahoma	NA	NA	NA
Oregon	No	Yes	No
Pennsylvania	No	Yes	No
Rhode Island	No	Yes	No
South Carolina	Yes	No	No
South Dakota	NP	NP	NP
Tennessee ³			
Texas	No	Yes	No
Utah	No	Yes	No
Vermont	No	Yes	No

— Table Continued —

TABLE A9 — <u>Continued</u>			
State	<u>Sole-Source Procurement Allowed From:</u>		
	An Affiliate	An Affiliate Subject to Criteria	Unaffiliated Entities Only
Virginia	No	No	Yes
Washington	No	Yes	Yes
West Virginia	NP	NP	NP
Wisconsin	No	No	Yes
Wyoming	Yes	Yes	No

¹ Sole-source procurement is not prohibited but is unlikely.

² Issue has not been addressed.

³ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: NA: Not applicable
NP: No policy
NR: Response not available

are allowed to bid. One state, Maryland, requires the host utility to post an avoided cost against which others bid and does not allow an affiliate to bid. Four states, namely Minnesota, Rhode Island, and Wyoming, allow an affiliate to bid but exclude the host utility from bidding. Five states, namely Mississippi, Nevada, Oregon, Virginia, and Washington, exclude both the host utility and its affiliates from bidding. Nineteen states either do not have a formal policy on eligibility of bidders or have not addressed the issue so far. The District of Columbia and Hawaii commissions do not have a formal bidding procedure in place.

On the issue of sole-source procurement from an affiliate (Table A-9), five survey responses, from Alabama, the District of Columbia, Indiana, South Carolina, and Wyoming, indicate that they allow sole-source procurement from an affiliate without formal criteria.¹ Sixteen states allow procurement from an affiliate subject to formal criteria. Three states, namely Virginia, Washington, and Wisconsin, limit sole-source procurement to unaffiliated entities only. Twenty states either have no formal policies on or have not addressed the issue of sole-source procurement from an affiliate in the past.

Commission Position on Self-Dealing

The commission position on self-dealing is shown in Table A-10. Only two commissions, namely Michigan and New York, issued a ruling or order involving self-dealing proposals. Three respondents from Michigan, Kansas and South Carolina felt that self-dealing has benefitted ratepayers in the past. Four responses, from the District of Columbia, Montana, New York, and South Dakota indicate that self-dealing has not been beneficial to ratepayers in the past. Thirty respondents

¹ Indiana does not prohibit sole-source procurement but does not have any precedent of sole-source procurement.

<p>TABLE A10</p> <p>PUC POSITION ON SELF-DEALING: RESPONSE TO QUESTIONS 15 AND 16</p>		
State	PUC Issued Ruling on Self-Dealing	Respondent Recognizes Benefits from Past Self-Dealing Transactions
Alabama	No	NA
Alaska	No	NA
Arizona	No	No opinion
Arkansas	No	No opinion
California	NR	NR
Colorado	No	No opinion
Connecticut	NA	NA
Delaware	NR	NR
District of Columbia	No	No
Florida	No	No opinion
Georgia	No	No opinion
Hawaii	No	No opinion
Idaho	No	No opinion
Illinois	NA	NA
Indiana	No	No opinion
Iowa	NA	NA
Kansas	No	Yes
Kentucky	NA	No opinion
Louisiana	No	No self-dealing
Maine	No	No opinion
Maryland	No	No self-dealing
Massachusetts	NR	NR

-- Table Continued --

TABLE A10 — <u>Continued</u>		
State	PUC Issued Ruling on Self-Dealing	Respondent Recognizes Benefits from Past Self-Dealing Transactions
Michigan	Yes	Yes
Minnesota	No	No self-dealing
Mississippi	No	No self-dealing
Missouri	No	No opinion
Montana	No	No
Nevada	No	No Opinion
New Hampshire	No	No Opinion
New Jersey	NR	NR
New Mexico	No self-dealing of power	No self-dealing of power
New York	Yes	No
North Carolina	No	No opinion; no self-dealing
North Dakota	No	No self-dealing
Ohio	No self-dealing	No self-dealing
Oklahoma	No self-dealing	No self-dealing
Oregon	No	No opinion; no self-dealing
Pennsylvania	No	No opinion
Rhode Island	No	No opinion
South Carolina	No	Yes
South Dakota	No	No
Tennessee ¹		
Texas	No	No opinion
Utah	No	No opinion
Vermont	No	No opinion

— Table Continued —

TABLE A10 — Continued

State	PUC Issued Ruling on Self-Dealing	Respondent Recognizes Benefits from Past Self-Dealing Transactions
Virginia	No	No opinion
Washington	No	Yes
West Virginia	No	No opinion
Wisconsin	No	No opinion
Wyoming	No	Yes

¹ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: NA: Not applicable
NR: Response not available

did not have an opinion as to whether self-dealing has benefitted or harmed ratepayers in the past. Ten of these commissions did not have any prior experience with self-dealing and, therefore, the staff have no basis for an opinion on the issue.

Commission Response to Section 711 of EAct

The commission response to section 711 of EAct is shown in Table A-11. Only four commissions, namely the District of Columbia, Idaho, Georgia, South Dakota, and Wisconsin, have issued a ruling so far on at least one proposal involving an EWG after the passage of the EAct. Among these, only Georgia articulated a position regarding section 711 of EAct.

Evolution of PUC Policy on Self-Dealing

The past changes of PUC policy and anticipated future changes on self-dealing are shown in Table A-12. The Michigan PSC represents the only commission to actually change its position on self-dealing in the past ten years. Half of the commissions (twenty-five) do not anticipate changes from their current status. Six states feel that they are not in a position to respond, while ten other commissions believe that they will adopt a different position in the future.

<p>TABLE A11</p> <p>PUC RESPONSE TO THE ENERGY POLICY ACT (EPAcT): RESPONSE TO QUESTIONS 17 AND 18</p>		
State	Ruling or Order Issued in Response to EPAcT	PUC Articulated a Position in Response to EPAcT
Alabama	No	No
Alaska	No; No EWG	NA
Arizona	No	NA
Arkansas	No	No
California	NR	NR
Colorado	No	NA
Connecticut	No	NA
Delaware	NR	NR
District of Columbia	Yes	No
Florida	No	No
Georgia	No	Yes
Hawaii	No	NA
Idaho	Yes	No
Illinois	No	NA
Indiana	No	NA
Iowa	No	NA
Kansas	No	No
Kentucky	No	NA
Louisiana	No	
Maine	No	No
Maryland	No	NA
Massachusetts	NR	NR

-- Table Continued --

TABLE A11 — <u>Continued</u>		
State	Ruling or Order Issued in Response to EPAct	PUC Articulated a Position in Response to EPAct
Michigan	No	NA
Minnesota	No	No
Mississippi	No	No
Missouri	No	No
Montana	No	No
Nevada	No	No
New Hampshire	No	NA
New Jersey	NR	NR
New Mexico	No	NA
New York	No	NA
North Carolina	Yes	No
North Dakota	No	NA
Ohio	No self-dealing	No self-dealing
Oklahoma	No	NA
Oregon	Yes; no self-dealing issues	No
Pennsylvania	No	NA
Rhode Island	No	NA
South Carolina	No	NA
South Dakota	Yes	NA
Tennessee ¹		
Texas	No	NA
Utah	No	NA
Vermont	No	No
Virginia	No	NA

— — Table Continued — —

TABLE A11 — Continued

State	Ruling or Order Issued in Response to EAct	PUC Articulated a Position in Response to EAct
Washington	No	No
West Virginia	No	No
Wisconsin	Yes	
Wyoming	No	

¹ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: NA: Not applicable
NR: Response not available

<p>TABLE A12</p> <p>CHANGES IN PUC's POSITION ON SELF-DEALING: RESPONSE TO QUESTIONS 19 AND 20</p>		
State	PUC Position on Self-Dealing Changed in Last Ten Years	Change in PUC Position on Self-Dealing Anticipated in the Future
Alabama	No	No
Alaska	No	Yes
Arizona	No	No
Arkansas	No	No
California	NR	NR
Colorado	No	No
Connecticut	No	No
Delaware	NR	NR
District of Columbia	No	No
Florida	No	Yes
Georgia	Yes	No
Hawaii	No	No
Idaho	No	No
Illinois	No	Yes
Indiana	No	No
Iowa	No	No
Kansas	No	Yes
Kentucky	No	No
Louisiana	No policy in the past	No opinion
Maine	No	No opinion
Maryland	No	No opinion
Massachusetts	NR	NR

-- Table Continued --

TABLE A12 — <u>Continued</u>		
State	PUC Position on Self-Dealing Changed in Last Ten Years	Change in PUC Position on Self-Dealing Anticipated in the Future
Michigan	Yes	Yes
Minnesota	No policy in the past	NA
Mississippi	No	No
Missouri	No	Yes
Montana		
Nevada	No	No
New Hampshire	Yes	No
New Jersey	NR	NR
New Mexico	No	No
New York	No	No
North Carolina	No	No
North Dakota	No self-dealing	Yes
Ohio	No self-dealing	NA
Oklahoma	No	No
Oregon	No	No
Pennsylvania	No	Yes
Rhode Island	No	Yes
South Carolina	No policy in the past	No opinion
South Dakota	Not clear	No opinion
Tennessee ¹		
Texas	No	Yes
Utah	No	No
Vermont	No	No opinion

-- Table Continued --

TABLE A12 — <u>Continued</u>		
State	PUC Position on Self-Dealing Changed in Last Ten Years	Change in PUC Position on Self-Dealing Anticipated in the Future
Virginia	No	No
Washington	No	No
West Virginia	No policy in the past	NA
Wisconsin	No	No
Wyoming	No	No

¹ The Tennessee PSC was not surveyed because most of the state's electric power is supplied by the TVA, a federal entity. The Tennessee PSC regulates only one small investor-owned electric utility.

Key: NA: Not applicable
NR: Response not available